

UNITED STATES BANKRUPTCY COURT Hearing Date: August 20, 2009
WESTERN DISTRICT OF NEW YORK Hearing Time: 10:00 AM

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IN RE: CASE NO.: 09-13264 mjk

Nicholas R. Colaizzi and Jessica M. Colaizzi, Chapter: 7
fka Jessica M. Kucynski,

DEBTORS. JUDGE: MICHAEL J. KAPLAN

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**NOTICE OF MOTION FOR ORDER
GRANTING RELIEF FROM AUTOMATIC STAY**

SIRS:

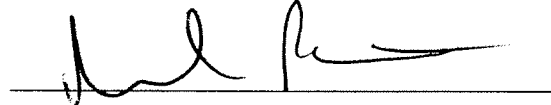
PLEASE TAKE NOTICE that Chase Home Finance, LLC ("Movant") seeks relief from the automatic stay as to the property located at 830 Ramar Road, Bullhead City, AZ 86442, and will move before the Honorable Michael J. Kaplan, United States Bankruptcy Judge in the United States Bankruptcy Court for the Western District of New York located at Public Safety Building, Hyde Park Blvd., Niagara Falls, NY 14302 on August 20, 2009 at 10:00 AM, or as soon thereafter as counsel may be heard, for an Order:

1. Pursuant to Bankruptcy Rule 4001, 11 U.S.C. 362(d)(1) and 11 U.S.C. 362(d)(2) granting Movant, its successors and/or assigns, relief from the Automatic Stay;
2. Waiving the ten (10) day stay invoked pursuant to F.R.B.P. 4001(a)(3); and

3. Granting Movant such other and further relief as is just and proper.

Dated: August 3, 2009
Plainview, NY

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard Postiglione', is written over a horizontal line.

ROSICKI, ROSICKI & ASSOCIATES, P.C.
By: Richard Postiglione, Esq.
Attorneys for Movant
Main Office 51 E Bethpage Road
Plainview, NY 11803
516-741-2585

TO:

Nicholas R. Colaizzi
Debtor
2637 Porter Road
Niagara Falls, NY 14305

Jessica M. Colaizzi
Debtor
2637 Porter Road
Niagara Falls, NY 14305

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Morris L. Horwitz
Trustee
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1321 Millersport Highway, Suite 101
Williamsville, NY 14221-9636

U.S. Trustee's Office
42 Delaware Avenue, Suite 100
Buffalo, New York 14202

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

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IN RE:

CASE NO.: 09-13264 mjk

Nicholas R. Colaizzi and Jessica M.
Colaizzi, fka Jessica M. Kucynski,

Chapter: 7

DEBTORS.

JUDGE: MICHAEL J. KAPLAN

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**APPLICATION IN SUPPORT OF AN ORDER
MODIFYING AND TERMINATING THE AUTOMATIC STAY**

**TO: THE HONORABLE MICHAEL J. KAPLAN,
UNITED STATES BANKRUPTCY JUDGE:**

The Application of Chase Home Finance, LLC ("Movant"), by its attorneys, Rosicki, Rosicki & Associates, P.C., respectfully represents and says:

Richard Postiglione, Esq., an attorney at law duly admitted to practice before this Court and the Courts of the State of New York, hereby affirms the following to be true under penalty of perjury:

I. RELIEF REQUESTED

1. This is a contested matter brought pursuant to Federal Rules of Bankruptcy Procedure, Rules 4001, 9013 and 9014 and Sections 361, 362(d) of Title 11 of the United States Code, 11 U.S.C. Section 101 et. seq. (the "Bankruptcy Code"), for an Order: (i) modifying and terminating the automatic stay to permit Movant to exercise all of its rights and remedies with respect to certain collateral known as 830 Ramar Road, Bullhead City, AZ 86442 (the "Premises"), (ii) waiving the ten (10) day stay pursuant to F.R.B.P 4001 (a) (3) and (iii) granting Movant such other and further relief as the Court deems just and proper.

II. BACKGROUND

2. Movant is the holder, of a Note and Mortgage, dated October 27, 2005, given by Nicholas R. Colaizzi and Jessica M. Colaizzi, fka Jessica M. Kucynski, (the "Debtors") in the

original principal amount of \$82,400.00 pledging the Premises as security. A copy of the Note and Mortgage is annexed hereto as Exhibit "A."

3. On July 15, 2009, the Debtors filed with the Clerk of this Court a petition for relief under Chapter 7 of the Bankruptcy Code.

III. THE APPLICATION

4. Upon information provided by the Movant, the Debtors are in contractual default under the terms of the Note and Mortgage for failure to make timely payments in the amount of \$779.01 per month, and the loan is contractually due for May 1, 2009.

5. That by failing to make mortgage payments, the Debtors have failed to provide Movant with adequate protection for its security, entitling Movant, its successors and/or assigns, to relief from the automatic stay.

6. Additionally, there is insufficient equity in the Premises.

7. Movant's total lien on the Premises as of the date of the within application is approximately \$80,544.13.

8. According to Schedule A, the Premises has an estimated value of \$60,000.00. A copy of the Schedule A is annexed hereto as Exhibit "B".

9. Based upon the above, insufficient equity exists in this Premises and it is not necessary for the Premises to be maintained by the estate. Consequently, Movant is entitled to relief from the automatic stay so that it may proceed with the enforcement of its security interest in the Premises.

10. For the reasons stated above, the Debtors have failed to adequately protect the interest of Movant, causing Movant irreparable harm and injury.

11. Furthermore, the Debtors have indicated their desire to surrender the premises. A copy of the Debtor's Statement of Intention is annexed hereto as Exhibit "C".

12. Additionally, by seeking relief under Chapter 7, Debtor is not seeking to reorganize and thus, the Premises is not necessary for a successful reorganization. Therefore, relief from stay is warranted pursuant to Section 362(d)(2).

13. Waiver of the stay invoked pursuant to F.R.B.P. 4001(a)(3) is sought so that Movant, its successors and/or assigns can immediately proceed with the foreclosure action and/or eviction proceeding.

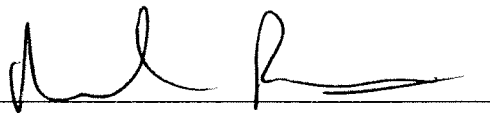
IV. CONCLUSION

14. Relief from the stay is warranted under Section 362(d). Accordingly, the automatic stay must be modified to permit Movant to assert its rights in the Premises, including, but not limited to, the consummation of a foreclosure sale and eviction proceedings with respect to the Premises.

WHEREFORE, Movant respectfully requests that an Order be granted modifying the automatic stay as to it, its successors and/or assigns, permitting maintenance of a mortgage foreclosure action and eviction proceeding with respect to the Premises; waiving the stay invoked pursuant to F.R.B.P. 4001(a)(3); and for such other and further relief as the Court may deem just and proper.

Dated: August 3, 2009
Plainview, NY

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Postiglione', is written over a horizontal line.

ROSICKI, ROSICKI & ASSOCIATES, P.C.

By: Richard Postiglione, Esq.

Attorneys for Movant

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

Nicholas R. Colaizzi and Jessica M. Colaizzi, fka Jessica M. Kucynski,

Debtors.

**NOTICE OF MOTION AND APPLICATION
IN SUPPORT OF ENTRY OF AN ORDER VACATING STAY**

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